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SENATE BILL 798

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. L. STOCKARD

AN ACT

RELATING TO TORT CLAIMS; CHANGING THE STANDARD FOR LIABILITY
UNDER THE TORT CLAIMS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-4-2 NMSA 1978 (being Laws 1976,
Chapter 58, Section 2) is amended to read:

"41-4-2. LEGISLATIVE DECLARATION. --

A. The legislature recognizes the inherently unfair
and inequitable results [~~which~~] that occur in the strict
application of the doctrine of sovereign immunity. On the other
hand, the legislature recognizes that while a private party may
readily be held liable for his torts within the chosen ambit of
his activity, the area within which the government has the power
to act for the public good is almost without limit and,

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1 therefore, government should not have the duty to do everything
2 that might be done. Consequently, it is declared to be the
3 public policy of New Mexico that governmental entities and
4 public employees shall only be liable within the limitations of
5 the Tort Claims Act and in accordance with the principles
6 established in that act.

7 B. The Tort Claims Act shall be read as abolishing
8 all judicially created categories such as "governmental" or
9 "proprietary" functions and "discretionary" or "ministerial"
10 acts previously used to determine immunity or liability.
11 ~~[Liability for acts or omissions under the Tort Claims Act shall~~
12 ~~be based upon the traditional tort concepts of duty and the~~
13 ~~reasonably prudent person's standard of care in the performance~~
14 ~~of that duty.]~~ The Tort Claims Act in no way imposes a strict
15 liability for injuries upon governmental entities or public
16 employees. Determination of the standard of care required in
17 any particular instance should be made with the knowledge that
18 each governmental entity has financial limitations within which
19 it must exercise authorized power and discretion in determining
20 the extent and nature of its activities. "

21 Section 2. Section 41-4-5 NMSA 1978 (being Laws 1976,
22 Chapter 58, Section 5, as amended) is amended to read:

23 "41-4-5. LIABILITY--OPERATION OR MAINTENANCE OF MOTOR
24 VEHICLES, AIRCRAFT AND WATERCRAFT. --The immunity granted
25 pursuant to Subsection A of Section ~~[5-14-4 NMSA 1953]~~ 41-4-4

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1 NMSA 1978 does not apply to liability for damages resulting from
2 bodily injury, wrongful death or property damage caused by the
3 [~~negligence~~] malicious, willful, reckless, wanton, grossly
4 negligent or fraudulent conduct of public employees while acting
5 within the scope of their duties in the operation or maintenance
6 of any motor vehicle, aircraft or watercraft."

7 Section 3. Section 41-4-6 NMSA 1978 (being Laws 1976,
8 Chapter 58, Section 6, as amended) is amended to read:

9 "41-4-6. LIABILITY--BUILDINGS, PUBLIC PARKS, MACHINERY,
10 EQUIPMENT AND FURNISHINGS.--The immunity granted pursuant to
11 Subsection A of Section [~~5-14-4 NMSA 1953~~] 41-4-4 NMSA 1978 does
12 not apply to liability for damages resulting from bodily injury,
13 wrongful death or property damage caused by the [~~negligence~~]
14 malicious, willful, reckless, wanton, grossly negligent or
15 fraudulent conduct of public employees while acting within the
16 scope of their duties in the operation or maintenance of any
17 building, public park, machinery, equipment or furnishings.
18 Nothing in this section shall be construed as granting waiver of
19 immunity for any damages arising out of the operation or
20 maintenance of works used for diversion or storage of water."

21 Section 4. Section 41-4-7 NMSA 1978 (being Laws 1976,
22 Chapter 58, Section 7) is amended to read:

23 "41-4-7. LIABILITY--AIRPORTS.--

24 A. The immunity granted pursuant to Subsection A of
25 Section [~~4 of the Tort Claims Act~~] 41-4-4 NMSA 1978 does not

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1 apply to liability for damages resulting from bodily injury,
2 wrongful death or property damage caused by the [negligence]
3 malicious, willful, reckless, wanton, grossly negligent or
4 fraudulent conduct of public employees while acting within the
5 scope of their duties in the operation of airports.

6 B. The liability imposed pursuant to Subsection A of
7 this section shall not include liability for damages due to the
8 existence of any condition arising out of compliance with any
9 federal or state law or regulation governing the use and
10 operation of airports. "

11 Section 5. Section 41-4-8 NMSA 1978 (being Laws 1976,
12 Chapter 58, Section 8) is amended to read:

13 "41-4-8. LIABILITY--PUBLIC UTILITIES. --

14 A. The immunity granted pursuant to Subsection A of
15 Section [~~4 of the Tort Claims Act~~] 41-4-4 NMSA 1978 does not
16 apply to liability for damages resulting from bodily injury,
17 wrongful death or property damage caused by the [negligence]
18 malicious, willful, reckless, wanton, grossly negligent or
19 fraudulent conduct of public employees while acting within the
20 scope of their duties in the operation of the following public
21 utilities and services: gas; electricity; water; solid or
22 liquid waste collection or disposal; heating; and ground
23 transportation.

24 B. The liability imposed pursuant to Subsection A of
25 this section shall not include liability for damages resulting

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1 from bodily injury, wrongful death or property damage:

2 (1) caused by a failure to provide an adequate
3 supply of gas, water, electricity or services as described in
4 Subsection A of this section; or

5 (2) arising out of the discharge, dispersal,
6 release or escape of smoke, vapors, soot, fumes, acids, alkalis,
7 toxic chemicals, liquids or gases, waste materials or other
8 irritants, contaminants or pollutants into or upon land, the
9 atmosphere or any watercourse or body of water. "

10 Section 6. Section 41-4-9 NMSA 1978 (being Laws 1976,
11 Chapter 58, Section 9, as amended) is amended to read:

12 "41-4-9. LIABILITY--MEDICAL FACILITIES.--The immunity
13 granted pursuant to Subsection A of Section [~~5-14-4 NMSA 1953~~]
14 41-4-4 NMSA 1978 does not apply to liability for damages
15 resulting from bodily injury, wrongful death or property damage
16 caused by the [~~negligence~~] malicious, willful, reckless, wanton,
17 grossly negligent or fraudulent conduct of public employees
18 while acting within the scope of their duties in the operation
19 of any hospital, infirmary, mental institution, clinic,
20 dispensary, medical care home or like facilities. "

21 Section 7. Section 41-4-10 NMSA 1978 (being Laws 1976,
22 Chapter 58, Section 10, as amended) is amended to read:

23 "41-4-10. LIABILITY--HEALTH CARE PROVIDERS.--The immunity
24 granted pursuant to Subsection A of Section [~~5-14-4 NMSA 1953~~]
25 41-4-4 NMSA 1978 does not apply to liability for damages

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1 resulting from bodily injury, wrongful death or property damage
2 caused by the [~~negligence~~] malicious, willful, reckless, wanton,
3 grossly negligent or fraudulent conduct of public employees
4 licensed by the state or permitted by law to provide health care
5 services while acting within the scope of their duties of
6 providing health care services. "

7 Section 8. Section 41-4-11 NMSA 1978 (being Laws 1976,
8 Chapter 58, Section 11, as amended) is amended to read:

9 "41-4-11. LIABILITY--HIGHWAYS AND STREETS. --

10 A. The immunity granted pursuant to Subsection A of
11 Section 41-4-4 NMSA 1978 does not apply to liability for damages
12 resulting from bodily injury, wrongful death or property damage
13 caused by the [~~negligence~~] malicious, willful, reckless, wanton,
14 grossly negligent or fraudulent conduct of public employees
15 while acting within the scope of their duties during the
16 construction, and in subsequent maintenance, of any bridge,
17 culvert, highway, roadway, street, alley, sidewalk or parking
18 area.

19 B. The liability for which immunity has been waived
20 pursuant to Subsection A of this section shall not include
21 liability for damages caused by:

22 (1) a defect in plan or design of any bridge,
23 culvert, highway, roadway, street, alley, sidewalk or parking
24 area;

25 (2) the failure to construct or reconstruct any

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1 bridge, culvert, highway, roadway, street, alley, sidewalk or
2 parking area; or

3 (3) a deviation from standard geometric design
4 practices for any bridge, culvert, highway, roadway, street,
5 alley, sidewalk or parking area allowed on a case-by-case basis
6 for appropriate cultural, ecological, economic, environmental,
7 right of way through Indian lands, historical or technical
8 reasons, provided the deviation:

9 (a) is required by extraordinary
10 circumstances;

11 (b) has been approved by the governing
12 authority; and

13 (c) is reasonable and necessary as
14 determined by the application of sound engineering principles
15 taking into consideration the appropriate cultural, ecological,
16 economic, environmental, right of way through Indian lands,
17 historical or technical circumstances. "

18 Section 9. EFFECTIVE DATE. -- The effective date of the
19 provisions of this act is July 1, 1997.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

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6 March 5, 1997

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8 Mr. President:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 SENATE BILL 798

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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and further recommends that it
16 now be referred to the PUBLIC AFFAIRS COMMITTEE.

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19 Respectfully submitted,

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25 Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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The roll call vote was 7 For 1 Against

Yes: 7

No: McSorley

Excused: None

Absent: None

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